

New Jersey Department of Environmental Protection
New Jersey Administrative Code
Title 7, Chapter 1E

Subchapter 1

General Provisions

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7:1E-1.1 Scope

(a) This chapter covers the discharge of hazardous substances as defined in this chapter. These rules set forth guidelines and procedures to be followed by all persons in the event of a discharge of a hazardous substance. They also set forth certain registration, reporting, design and maintenance requirements for owners and operators of major facilities and transmission pipelines which handle hazardous substances.

(b) This subchapter prescribes the provisions that are generally applicable. The following shall govern how certain terms are defined for use in this chapter, which persons are subject to this chapter, and the Department's rights of access for determining compliance with this chapter and the Act.

7:1E-1.2 Construction

(a) These rules, being necessary to promote the public health and welfare, and to protect the environment, shall be liberally construed so as to permit the Department to discharge its statutory functions under the Act.

(b) The Commissioner may amend or repeal this chapter in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 1:30.

7:1E-1.3 Severability

If any section, subsection, provision, clause or portion of this chapter or the application thereof to any person or circumstance is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter and the application thereof to other persons or circumstances shall not be affected thereby, and shall remain in full force and effect.

7:1E-1.4 Relationship to Federal and State Law

These rules are not intended to and do not relieve any person of the duty to comply with all other applicable laws, ordinances, rules, regulations or orders of governmental authority governing activities regulated hereunder, including rules or regulations of the New Jersey Department of Environmental Protection, New Jersey Department of the Treasury, and other appropriate State, Federal and local agencies.

7:1E-1.5 State non-liability

(a) New Jersey State government is not liable for any damages arising from its actions or omissions relating to any plan, registration, or map required pursuant to this chapter. No approval by the Department of any plan or of any cleanup and removal activities shall be a defense against liability for the discharge, nor shall it shift liability for the discharge to the Department.

(b) In the event of a discharge, any person responsible for the discharge shall be held liable to the extent determined by the Act.

7:1E-1.6 Definitions

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

"Aboveground storage tank" means any storage tank not defined as an underground storage tank.

"Act" means the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., as amended.

"Affiliate" means, with respect to any person, another person:

1. Who has a controlling interest in such person;
2. In whom such person has a controlling interest; or

3. Who is under common control with such person.

"Agent(s) or officer(s) of the municipality" means a duly authorized representative of the municipality or local board of health, including, but not limited to, a member of the police, fire, or public works department, public health officer, township engineer, zoning officer, director of emergency management, or environmental compliance officer.

"API" means the American Petroleum Institute.

"API 510" means API's Standard 510, entitled "Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration," as amended or supplemented.

"API 570" means API's Piping Inspection Code 570, entitled "Inspection, Repair, Alteration and Rerating of In-service Piping Systems," as amended or supplemented.

"API 574" means the API's Recommended Practice 574, entitled "Inspection of Piping, Tubing, Valves and Fittings," as amended or supplemented.

"API 653" means the API's Standard 653, entitled "Tank Inspection, Repair, Alteration and Reconstruction," as amended or supplemented.

"ASME" means the American Society of Mechanical Engineers.

"ASME Section V" means ASME Boiler and Pressure Vessel Code Section V, entitled "Nondestructive Examination," as amended or supplemented.

"ASME Section VIII" means ASME Boiler and Pressure Vessel Code Section VIII, entitled "Pressure Vessels," as amended or supplemented.

"ASME Section X" means ASME Boiler and Pressure Vessel Code Section X, entitled "Fiberglass-Reinforced Plastic Pressure Vessels," as amended or supplemented.

"Assertedly confidential information" means information which is the subject of a confidentiality claim, for which a confidentiality determination has not been made.

"ASTM" means the American Society of Testing and Materials.

"ASTM E1067" means ASTM's Standard E1067-96, entitled "Standard Practice for Acoustic Emission Examination of Fiberglass Reinforced Plastic Resin (FRP) Tanks/Vessels," as amended and supplemented.

"Broker" means any person who arranges for the transportation, treatment, storage or disposal of hazardous substances on behalf of another person.

"Bulk storage" means the holding of large quantities of substances.

"CFR" means the Code of Federal Regulations.

"Claimant" means any person who submits a confidentiality claim under this chapter.

"Class confidentiality determination" means a confidentiality determination made by the Department under N.J.A.C. 7:1E-8.9, for a class of information.

"Cleanup and removal activities" means actions to clean up or remove or attempt to clean up or remove a discharge of a hazardous substance or the source thereof, or to chemically neutralize the discharge, or measures to prevent or mitigate any damages to the public health, safety or welfare, including, but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property, including wildlife and other natural resources.

"Cleanup and removal costs" means all costs associated with cleanup and removal activities incurred by the State, its political subdivisions or their agents or any person with written approval of the Department.

"Commissioner" means the Commissioner of the Department of Environmental Protection or the person designated to act on his or her behalf pursuant to an administrative order.

"Confidential copy" means a record (or copy thereof) submitted to or obtained by the Department, containing information which the claimant asserts is confidential information.

"Confidential information" means information for which the claimant has asserted a confidentiality claim, in compliance with the procedures required by N.J.A.C. 7:1E-7, and such confidentiality claim has not expired by its terms, been waived or withdrawn, and for which the Department has made a confidentiality determination in compliance with N.J.A.C. 7:1E-8.

"Confidentiality claim" or "claim" means, with respect to information that a person is required either to submit to the Department or to allow the Department to obtain, a written request by such person that the Department treat such information as confidential information.

"Confidentiality determination" means a determination by the Department that assertedly confidential information is or is not confidential information.

"Containment" or "containment activities" means actions to limit or prevent the spread of a leak or discharge.

"Contractor" means a person, other than an employee of the owner or operator or the Department, who has entered into an agreement with the owner or operator or the Department to

perform services or to provide goods.

"Controlling interest" means any of the following:

1. The direct or indirect beneficial ownership, by the person asserted to have a controlling interest and any of such person's affiliates, of at least 50 percent of the voting stock or other equity interest in a person;
2. The holding of any direct or indirect beneficial interest, by the person asserted to have a controlling interest in any of such person's affiliates, in at least 50 percent of the income or profits of a person; or
3. The existence of any other relationship between the person asserted to have a controlling interest and the person controlled, which relationship in fact constitutes control over the affairs of the person controlled.

"DCR plan" means the discharge cleanup and removal plan required under N.J.A.C. 7:1E-4.

"Department" means the New Jersey Department of Environmental Protection.

"Diligent inquiry" means:

1. Conducting a diligent search of all documents which are reasonably likely to contain information related to a possible discharge, which documents are in such person's possession, custody or control, or in the possession, custody or control of any other person from whom the person conducting the search has legal right to obtain such documents; and
2. Making reasonable inquiries of current and former employees and agents whose duties include or included any responsibility for hazardous substances, and any other current and former employees or agents who may have knowledge or documents relevant to a discharge.

"Discharge" means any intentional or unintentional action or omission, unless pursuant to and in compliance with the conditions of a valid and effective Federal or State permit, resulting in the releasing, spilling, pumping, pouring, emitting, emptying or dumping of a hazardous substance into the waters or onto the lands of the State or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State. This term does not include "leak".

"Discharge cleanup organization" means an organization or association that has equipment and personnel to be utilized in the recovering, containing, cleaning up or removing of discharges.

"Discharge monitoring device" means any equipment or instrumentation that is used to detect discharges at the facility.

"Double-walled piping" means piping which consists of one pipe fixed inside another, with an annular space between.

"DPCC plan" means the discharge prevention, containment and countermeasure plan required under N.J.A.C. 7:1E-4.

"Environmentally sensitive areas" means, for the purposes of planning for discharge control and mitigation, geographic areas which contain one or more significant natural or ecological resources as set forth in N.J.A.C. 7:1E-1.8.

"EPA" means the U.S. Environmental Protection Agency.

"Equivalent measure" means:

1. The total volume, in gallons, of the drum, tote or other container holding the hazardous substance; or
2. For hazardous substances not stored or transported in containers, the calculated volume, in gallons, of the space the hazardous substance occupies.

"Facility" means any place or equipment that is used to refine, produce, store, hold, handle, transfer, process or transport hazardous substances.

"Facility inventory" means an actual accounting of on-hand hazardous substance quantities, performed on a minimum of an annual basis.

"Final public copy" means a copy of a record submitted to or obtained by the Department, identical to the confidential copy except that any confidential information has been blacked out; provided, however, that if the record is not in a form in which confidential information can be concealed by blacking out, the "final public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

"Guarantor" means a person who:

1. Possesses a controlling interest in the owner or operator;
2. Possesses a controlling interest in a person who possesses a controlling interest in the owner or operator;
3. Is controlled by a common parent firm that possesses a controlling interest in the owner or operator; or
4. Is engaged in a substantial business relationship with the owner or operator and issues the guarantee as an act incident to that business relationship.

"Handling" means treating, dealing with, or managing.

"Hazardous substances" means petroleum, petroleum products, pesticides, solvents and other substances as set forth in N.J.A.C. 7:1E-1.7.

"Impermeable" means utilizing a layer of natural or man-made material of sufficient thickness, density and composition so as to have a maximum permeability for the hazardous substance being contained of 10^{-7} centimeters per second at the maximum anticipated hydrostatic pressure.

"Incompatible materials" means those substances which, if mixed, will create hazards greater than those posed by the individual substances alone, such as fire, explosion, or generation of toxic fumes.

"Integrity testing" means a method of testing structures where either hydrostatic testing using water or other liquid or pneumatic testing is done in combination with a system of nondestructive testing which includes shell thickness testing. The nondestructive testing procedures shall be adequate to detect cracks, leaks, and corrosion, erosion or other wall thinning to less than a predetermined minimum thickness to ensure sufficient structural strength. Nondestructive integrity test techniques include magnetic particle tests, acoustic emission tests, electromagnetic particle or eddy current tests, radiography and radiation tests, liquid penetrant tests, or ultrasonic tests.

"Internal visual inspection" means an optical examination of the interior of an aboveground storage tank sufficient to detect corrosion or leaking of the tank bottom and to identify and evaluate any tank bottom settlement.

"Leak" or "leakage" means any escape of a hazardous substance from the ordinary containers employed in the normal course of storage, transfer, processing or use, into a secondary containment or diversion system or onto a surface from which it is cleaned up and removed prior to its escape into the waters or onto the lands of the State.

"Liquid" means having a viscosity between 0.2 centipoise and 3000 centipoise inclusive at one atmosphere (760.0 millimeters of mercury) pressure and temperatures between 32 and 120 degrees Fahrenheit (0 and 49 degrees centigrade).

"Major facility" means all facilities, located on one or more contiguous or adjacent properties owned and/or operated by the same person, having total aggregate, combined storage capacity of:

1. 20,000 gallons or more for hazardous substances other than petroleum or petroleum products;
2. 200,000 gallons or more for hazardous substances of all kinds; or
3. An equivalent measure as defined in this section, for hazardous substances which are not commonly measured by volume.

4. A vessel, except a vessel used solely for activities directly related to recovering, containing, cleaning up or removing discharges of petroleum in the surface waters of the State, including training, research and other activities directly related to discharge response, shall be considered a major facility only when hazardous substances are transferred between vessels. A "transmission pipeline" is not a major facility.

"Major leak" means an accident required to be reported pursuant to 49 CFR 195.50.

"Major maintenance" means maintenance required to correct any condition which is of such a nature that it presents an immediate hazard to persons or property.

"Major repair" means repairs necessary because of a major leak or major maintenance.

"Natural resources" means all land, fish, shellfish, wildlife, biota, air, waters and other such resources owned, managed, held in trust, or otherwise controlled by the State.

"NJPDES permit" means a permit or permit-by-rule issued by the Department pursuant to N.J.A.C. 7:14A.

"Nonmiscible lighter-than-water" means having a density less than water and not mixing with water to an appreciable degree.

"NPDES permit" means a permit or permit-by-rule issued by EPA pursuant to 40 CFR 122.

"Owner or operator" means any person who, with respect to:

1. A vessel, owns, operates or charters by demise such vessel;
2. Any facility, owns such facility, or operates it by lease, contract or other form of agreement; and
3. Abandoned or derelict facilities, owned or operated such facility immediately prior to such abandonment, or the owner at the time of the discharge.

"Paved or surfaced" means to cover with concrete, tile, stones or the like, to create a level, stable, impermeable surface.

"Person" means public or private corporations, companies, associations, societies, firms, partnerships, joint stock companies, as well as individuals, and when used to designate the owner of property which may be subject to this chapter, includes this State, the United States, any other state of the United States, and any foreign country or government, and any political subdivisions or agents, lawfully owning or possessing property in this State.

"Person in charge" means an individual designated as being in charge of marine transfer operations pursuant to U.S. Coast Guard regulations at 33 CFR 154.710 or 33 CFR 155.700.

"Person responsible for a discharge" means:

1. Any person whose act or omission results or has resulted in a discharge;
2. Each owner or operator of any facility, vehicle or vessel from which a discharge has occurred;
3. Any person who owns or controls any hazardous substance which is discharged;
4. Any person who has directly or indirectly caused a discharge;
5. Any person who has allowed a discharge to occur; or
6. Any person who brokers, generates, or transports the hazardous substance discharged.

"Petroleum" or "petroleum products" means any bituminous liquid that is essentially a complex mixture of hydrocarbons of different types with small amounts of other substances, such as compounds of oxygen, sulfur or nitrogen, or metallic compounds, or any of the useful liquid products obtained from such a liquid by various refining processes, such as fractional distillation, cracking, catalytic reforming, alkylation and polymerization. This term shall include, but not be limited to, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, and hazardous substances listed in Appendix A which are to be used in the refining or blending of crude petroleum or petroleum stock in this State.

"Preliminary public copy" means a copy of a record held by the Department, identical to the confidential copy except that any assertedly confidential information has been blacked out; provided, however, that if the record is not in a form in which confidential information can be concealed by blacking out, the "preliminary public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

"Process area" or "production facility" means an area employed in production in which an action, operation or treatment embracing chemical, industrial, manufacturing or processing factors, methods, or forms is carried out utilizing hazardous substances. These factors, methods, or forms include, but are not limited to, batch or continuous chemical reactions, distillation, blending and mixing operations, refining and re-refining processes, and separation processes.

"Radionuclide" means any substance listed in 40 CFR 302.4, Appendix B.

"Record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved and from which the information can be

retrieved or copied.

"Regional Administrator" means the Regional Administrator of EPA for the Federal region which includes the State of New Jersey.

"Regulated portion" means the area, portion, or equipment in a major facility or transmission pipeline in which hazardous substances are routinely refined, produced, stored, held, handled, used, processed, or transferred.

"Requester" means a person who has made a request to the Department to inspect or copy records which the Department possesses or controls.

"Reservoir" means a receptacle or chamber which can be used for storing a fluid.

"Response coordinator" means the individual at the major facility who is responsible for the management of the DPCC and DCR plans at the facility and who shall possess sufficient corporate authority and technical background to resolve issues relating to the execution of the DPCC and DCR plans based on information provided by manufacturing, engineering, maintenance, safety and environmental representatives.

"Secondary containment or diversion system" means any structures, devices or combinations thereof supplementary to the ordinary containers employed in the normal course of storage, transfer, processing or use, designed and operated to prevent leaks of hazardous substances from becoming discharges.

"Sewage" means domestic sewage, including the contents and effluents of septic tanks, public sewer systems and public sewage treatment plants.

"Sewage sludge" means the dried or semi-liquid residue of a sewage treatment process.

"Small business" means any business which is resident in New Jersey, independently owned and operated, not dominant in its field, and employs fewer than 100 full time employees.

"SPCC plan" means a Federal Spill Prevention Control and Countermeasure plan developed and approved pursuant to 40 CFR 112.

"Standard operating procedure" or "SOP" means the document setting forth the operating procedures covering all details of any operation involving a hazardous substance which is stored, processed, transferred or used at the facility.

"State of the art technology" means up-to-date technology reflected in equipment or procedures that, when applied at a major facility, will result in a significant reduction in the probability of a discharge. The technology represents an advancement in reduction of leaks or discharges and shall have been demonstrated at a similar facility to be reliable in commercial operation or in a pilot

operation on a scale large enough to be translated into commercial operation. The technology shall be in the public domain at reasonable cost commensurate with the reduction in probability of leaks or discharges achieved, or otherwise available at reasonable cost commensurate with the reduction in probability of leaks or discharges achieved. Technologies verified by the New Jersey Corporation for Advanced Technology (NJCAT) as innovative environmental technologies are deemed to meet this definition. Information on verified technologies shall be available from the Department through the Office of Innovative Technology and Market Development within the Division of Science and Research.

"Static head product testing" means testing which involves the filling of a tank, not under pressure, to determine if there are any leaks over a definite period of time.

"Storage capacity" means that capacity which is dedicated to, used for, or intended to be used for storage of hazardous substances of all kinds. This term shall include, but not be limited to, above- and underground storage tanks, drums, reservoirs, containers, bins, and the intended or actual use of open land or unenclosed space. For a storage tank, the total volumetric design capacity of the tank shall be the storage capacity. This term shall not include the capacity of:

1. A heating oil tank servicing only the individual private residence at which it is located; or
2. Any underground storage tank at the facility used solely to store heating oil for on-site consumption.

"Storage tank" means any tank or reservoir which is a container for hazardous substance(s) and which is primarily used for bulk storage.

"Substantial business relationship" means the extent of a business relationship necessary under applicable State law to insure that a guarantee contract issued incident to that relationship is valid and enforceable.

"Substantial damage" means damage which is material and of real worth, value or effect. This term does not include damage which is speculative, contingent, or nominal.

"Substantial modification" means any change in facility design, construction, operation or maintenance that will materially affect the facility's potential for discharges of hazardous substances. This term may include, but is not limited to, change in service of a storage tank, discontinuation of or start-up of a production facility, change in use of transfer areas or substances transferred, and change in hours of operation.

"Substantial reconstruction" means any restoration, refurbishment, renovation or relocation of existing equipment which incurs costs equal to 50 percent or more of the replacement value of the equipment, or which impairs the physical integrity of the equipment or its monitoring systems.

"Substantiation" means information which a claimant submits to the Department in support of a confidentiality claim pursuant to N.J.A.C. 7:1E-8.3.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Transfer" means onloading or offloading between major facilities and vessels, or vessels and major facilities, and from vessel to vessel or major facility to major facility except for fueling or refueling operations, and except that with regard to the movement of hazardous substances other than petroleum, it shall also include any onloading of or offloading from a major facility.

"Transfer capacity" means the maximum quantity of hazardous substances which can be transferred into or out of a facility in a 24-hour period.

"Transmission pipeline" means new and existing pipe and any equipment, facility, rights-of-way, or building used or intended for use in the transportation of a hazardous substance by a pipeline and having a throughput capacity of 140 gallons per minute (530 liters per minute) or greater. This term does not include the transportation of a hazardous substance through onshore production or flow lines, refining, or manufacturing facilities, or storage terminals or in-plant piping systems associated with those facilities. Any pipe used or intended to be used in the transportation of a hazardous substance which is not a transmission pipeline will be considered an in-facility pipe.

"Underground storage tank" means any tank defined as such in N.J.A.C. 7:14B.

"Vessel" means every description of watercraft or other contrivance that is practicably capable of being used as a means of commercial transportation of hazardous substances upon the waters, whether or not self propelled.

"Waters" means the ocean and its estuaries to the seaward limit of the State's jurisdiction, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State.

7:1E-1.7 Hazardous substances

(a) All petroleum and petroleum products and all substances listed in Appendix A to this chapter, incorporated herein by reference, shall be considered hazardous substances, except that sewage and sewage sludge shall not be considered as hazardous substances.

(b) For the purposes of this chapter, the following shall not be considered hazardous substances:

1. Metals, in either their pure elemental form or alloyed, in solid pieces with at least one

dimensional measurement equal to or exceeding 100 micrometers (0.004 inches) or chemically bonded to an inert substrate; and

2. Any flammable substance or inert gas listed in Appendix A and which is designated by an asterisk.

7:1E-1.8 Environmentally sensitive areas

(a) For the purposes of designing and implementing a DPCC and a DCR plan, pursuant to N.J.A.C. 7:1E-4, the following shall be considered environmentally sensitive areas:

1. Surface waters, including, without limitation the following: large rivers, medium rivers, streams, creeks, ponds, lakes and reservoirs as defined in N.J.A.C. 7:7E-4.1(b); canals as defined in N.J.A.C. 7:7E-3.8(a); estuaries, as defined in 33 U.S.C. 1330(k); and bays, including without limitation open bays, semi-enclosed bays and back bays, as defined in N.J.A.C. 7:7E-4.1(b);

2. Any water resource, as defined at N.J.A.C. 7:19-1.3, which is utilized a public water system, nonpublic water system, or water supply system, as defined at N.J.A.C. 7:10-1.3;

3. Bay islands, as defined at N.J.A.C. 7:7E-3.21(a), and barrier island corridors, as defined at N.J.A.C. 7:7E-3.20(a);

4. Beaches, as defined in N.J.A.C. 7:7E-3.22(a);

5. Dunes, as defined in N.J.A.C. 7:7E-3.16(a);

6. Wetlands and wetland transition areas, including without limitation the following: freshwater wetlands and transition areas, as defined at N.J.A.C. 7:7A-1.4; wetlands, as defined in N.J.A.C. 7:7E-3.27(a); and wetland buffers, as defined in N.J.A.C. 7:7E-3.28(a);

7. Breeding areas for forest area nesting species, colonial water birds, or aquatic furbearers;

8. Migratory stopover areas for migrant shorebirds, raptors or passerines;

9. Wintering areas, including coastal tidal marshes and water areas, waterfowl concentration areas, and Atlantic white cedar stands;

10. Prime fishing areas, as defined in N.J.A.C. 7:7E-3.4(a);

11. Finfish migratory pathways, as defined in N.J.A.C. 7:7E-3.5(a);

12. Submerged vegetation habitat, as defined in N.J.A.C. 7:7E-3.6(a);
13. Shellfish waters as defined in N.J.A.C. 7:9B-1.4;
14. Forest areas, including prime forest land and unique forestland;
15. Habitat for Federal and State endangered or threatened plant and animal species, as defined in N.J.A.C. 7:7E-3.38(a);
16. Federal and State wilderness areas, including areas included within the Natural Areas System, as designated in N.J.A.C. 7:5A-1.13, or the State Register of Natural Areas pursuant to the Natural Areas System Act, N.J.S.A. 13:1B-15.12a et seq. and 15.4 et seq., and N.J.A.C. 7:5A-1.4, and preserved land held by the New Jersey Natural Lands Trust pursuant to the New Jersey Natural Lands Trust Act, N.J.S.A. 13:1B-15.119 et seq.; and
17. Wild, scenic, recreational, or developed recreational rivers, as defined in N.J.A.C. 7:7E-3.46(a).

7:1E-1.9 Access

(a) During normal business hours and at any time during an actual or suspected discharge or violation the Department and its representatives shall have the right to enter and inspect any facility, vessel, building or equipment, or any portion thereof, in order to ascertain compliance with the Act, this chapter, or any order, or consent agreement issued or entered into pursuant thereto. At any time, the Department and its representatives shall have the right to enter and inspect those portions of any facility, vessel, building or equipment actively engaged in the transfer or processing of hazardous substances in order to ascertain compliance with the Act or this chapter, or any order, consent order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials at the facility, to sketch, photograph or videotape any portion of the facility, vessel, building or equipment, to copy or photograph any document or records necessary to determine such compliance or noncompliance; and to interview any employees or representatives of the owner or operator or their contractors. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(b) (Reserved)

(c) (Reserved)

(d) Owners or operators, and any employees or representatives thereof, shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection.

7:1E-1.10 Waiver

The Department, when it determines that the application of these rules would impair expeditious containment or cleanup and removal of discharges, or endanger life, health, safety or the environment, may waive any provision of these rules.

7:1E-1.11 Applicability

(a) No person shall cause, suffer, allow or permit a discharge of a hazardous substance.

(b) Major facilities, as defined in N.J.A.C. 7:1E-1.6, are required to meet the standards of this chapter. The Department shall grant the owner or operator of a major facility a reasonable period of time, in light of all circumstances including economic feasibility, to upgrade existing equipment and procedures to meet the standards of N.J.A.C. 7:1E-2, excluding the requirements of N.J.A.C. 7:1E-2.2(a)4, 5, 6, and 7, if the major facility proves to the satisfaction of the Department that such a time period is needed. The rate of such upgrading shall be proposed by the owner or operator as part of the DPCC and DCR plans submitted pursuant to N.J.A.C. 7:1E-4. New equipment and procedures shall meet the standards of N.J.A.C. 7:1E-2 prior to being placed into service.

(c) A non-major facility which adds storage capacity so as to become a major facility shall be considered a major facility.

(d) The Department may require of any major facility which has been granted a period to upgrade, the installation of alternative prevention and/or detection devices such as alarms, so as to minimize the chances of a discharge, and may, in addition, require the owner or operator of such a major facility to demonstrate an enhanced ability to prevent, expeditiously contain and/or clean up and remove a discharge from the portion of the facility to which a time period to upgrade has been granted. If the Department requires the installation of alternative prevention and/or detection devices, the owner or operator shall propose the devices to be used, subject to the Department's approval.

(e) The Department recognizes that the designs of major facilities differ, and, therefore, appropriate methods of discharge prevention are necessarily site-specific. Wherever in these rules a particular method of discharge prevention is mandated, the owner or operator of a major facility may substitute an alternate method if he or she can demonstrate to the satisfaction of the Department that such alternate method will provide protection against discharges at least equivalent to the method it is intended to replace.